STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 12, 2011
v	No. 296214 Saginaw Circuit Court
MORRIS JAMES YOUNG, SR., Defendant-Appellant.	LC Nos. 08-030940-FH-5, 09-032214-FH-5

Before: O'CONNELL, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was tried and convicted by a jury during a consolidated trial of two criminal files, of two counts of delivering less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv) (one from each case), one count of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and one count of maintaining a drug house, MCL 333.7405(1)(d). Defendant appeals his convictions, and we affirm.

These consolidated cases arise out of two drug raids performed roughly a year apart at a house at 2469 Bewick after two "controlled buys" of crack cocaine made by confidential informants, only one of whom testified at trial. In 2008, the non-testifying informant, who identified defendant as going by the nickname of "Hillbilly," conducted a controlled purchase of crack cocaine from defendant at defendant's house. Saginaw Township Police Officer Donald Morse recognized defendant's voice over the informant's electronic monitor during this transaction. Numerous witnesses familiar with defendant were asked about defendant's nicknames, and they uniformly testified that his only known nickname was James and that they had never heard him called "Hillbilly."

Approximately a day later, police raided the house and found a substantial quantity of crack cocaine in a back bedroom. Also in the back bedroom were numerous insulin needles that defendant claimed ownership of for his diabetes. Also found in the house were numerous Vicodin pills, "residency papers" addressed to defendant at the house, and a number of Bridge

cards.[1] Two of defendant's minor sons were present, one of whom claimed that the drugs were his and that he had been selling crack cocaine since he was 15,[2] but neither of them could explain the presence of the Bridge cards.

Defendant had been observed to leave the residence shortly before the raid. He was arrested when he stopped on his own at his girlfriend's house. He was found to have a considerable amount of money on his person, which he claimed was from recent casino winnings. It appears that defendant frequented a casino and had recently won a substantial amount of money, despite losing money overall. Another person, Evelyn Spencer, was also observed to stop by the house briefly before the raid; she was also detained and arrested on an outstanding warrant. Defendant was released on bail.

A year later, the police conducted another controlled purchase of cocaine with another confidential informant, Robert Karp, at the same location. Karp testified that he became a confidential informant in the hopes of arranging to get help for Spencer and to remove one of her sources of drugs. Spencer, however, testified that defendant was only a friend from whom she never received drugs, and Karp was crazy and obsessed with her and jealous of her relationship with defendant. Karp was fitted with a video recording system during the controlled purchase, but because he accidentally put his arms over the lens, it apparently revealed little.[3] Karp testified that he bought crack cocaine from defendant; defendant testified that he did not give Karp any cocaine, but rather accepted repayment for a guitar that defendant had been holding as collateral for a loan to Karp.

Another raid was performed on defendant's house, and crack cocaine was again found in the back bedroom. A spoon with apparent drug residue on it was found in the bathroom. Bridge cards were again found, as were a large quantity of Vicodin pills prescribed to Warren Abernathy. Abernathy had stayed at defendant's house for the previous week because of domestic difficulties and was on a number of medications that he accidentally left at defendant's house. One of defendant's sons again claimed responsibility for the cocaine.[4] The jury found defendant guilty of delivering cocaine, possessing cocaine with the intent to deliver it, and maintaining a drug house; it found defendant not guilty of any crime related to the Vicodin and not guilty of conspiracy.

Defendant first argues on appeal that there was insufficient evidence to find him guilty of possessing the cocaine found in 2008 because there was no evidence linking him to the back bedroom of the house. We disagree.

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[1] Bridge cards are essentially debit cards used in place of food stamps.

[2] This son was not charged with any crime arising out of the 2008 raid.

[3] No copy of this recording was provided to this Court.

[4] This time, this son was charged, and he pleaded no contest to simple possession and maintaining a drug house.

In reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether the trier of fact could rationally have found all essential elements of the charged offense proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). This Court must not interfere with the trier of fact's role as the sole arbiter of the weight and credibility to be given to witnesses and inferences from the evidence. *Id*. at 514. Nonetheless, a reviewing court must find *sufficient* evidence to support a conviction, not merely *any* evidence. *Id*. at 513-514.

It is true that defendant did not actually own the house; rather, another relative did. Furthermore, the evidence showed that defendant spent much of his time at his girlfriend's house, and when he stayed at 2469 Bewick, he slept on a sofa in the living room. However, insulin needles to which defendant claimed ownership were found in the back bedroom. There is no evidence that the needles were actually used for any illicit purpose; the prosecution witness conceded that they are used by diabetics, and that was the purpose for which defendant claimed them. However, the inescapable fact is therefore that defendant's insulin needles were located in the back bedroom, where the cocaine was found. Therefore, even presuming defendant did not sleep in that room, he appears to have had some extensive connection to it.

Additionally, neither of defendant's sons could explain the Bridge cards; not even the son who claimed responsibility for the drugs and admitted that he sometimes accepted Bridge cards as payment. Defendant did not otherwise have a substantial income: SSI checks and occasionally fixing cars. He nevertheless maintained the house with food in it for several children and an occasional guest despite an overall losing trend at the casino. Furthermore, the same kind of drugs were found in the same place in the same house a year later, despite defendant's inability *not* to be aware of them at that point. Based on defendant's admission that he was the adult in charge of the house, this suggests that the drugs were either his all along, or he had no control over the house whatsoever. Morse positively identified defendant's "distinctive" voice over the informant's electronic monitor, and the jury would have been in the position to evaluate the distinctiveness of defendant's voice as he testified at trial.

We find that the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that defendant did possess the cocaine found at 2469 Bewick in 2008.

Defendant next argues that he was denied effective assistance of counsel. We disagree. "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). A trial court's findings of fact are reviewed for clear error and questions of law are reviewed de novo. *Id*. A defendant must overcome the presumption that counsel was effective by showing that counsel fell below an objective standard of reasonableness and that proceedings likely would have had a different outcome but for counsel's error. *People v Swain*, 288 Mich App 609, 643; 794 NW2d 92 (2010).

Defendant first argues that Spencer "was not questioned about the marked money paid to the defendant for a guitar, and not for drugs." Defendant does not explain what questions should have been put to Spencer, what her anticipated response might have been, or how they would have helped defendant. Spencer and Karp each testified to utterly incompatible stories of their relationship with each other and Karp's motivation for participating in the controlled drug

purchase in 2009. It appears that the jury found Karp's version of events more credible. It is therefore unclear that any additional testimony from Spencer would have made any difference, in any event.

Defendant next argues that the prosecution elicited impermissible hearsay through Morse from the 2008 confidential informant identifying defendant as "Hillbilly." Given that no other witness had ever heard of defendant going by the name of "Hillbilly," or even having any reason to do so, the informant's identification would seem to cast doubt on the informant rather than bolster the prosecution's case. The informant's identification of defendant as "Hillbilly" is unlikely to have been seriously prejudicial to defendant, irrespective of its admissibility.

Defendant finally argues that a witness who did not testify would have provided more definitive testimony, and documentary proof, that the money defendant had on his person in 2008 came from recent casino winnings. We note that the jury was clearly willing to find other witnesses more credible than defendant, as shown by Abernathy's testimony and defendant's acquittal of any Vicodin-related charges. However, defendant was actually able to make the point to the jury that he had just won at the casino, and his subpoenaed records were given to the jury. We are simply not persuaded that there is a substantial likelihood, under the circumstances of this case, that this proposed additional testimony would have changed the outcome.

Defendant finally argues that there is insufficient evidence to support his conviction for operating a drug house. Defendant argues that he was not really in control of 2469 Bewick and had no knowledge of drug sales transpiring there. We disagree.

Defendant's argument would have some merit if he had only been charged on the basis of the 2008 raid. As discussed, part of the evidence supporting defendant's 2008 conviction is the subsequent finding of drugs in the house again a year later. Furthermore, although maintenance of a drug house does not require a defendant to make it available for the sale of drugs "continuously for an appreciable period," a single occasion is insufficient. *People v Thompson*, 477 Mich 146, 152-158; 730 NW2d 708 (2007). A single drug transaction cannot, without more, be a predicate for a conviction for maintaining a drug house.

However, as discussed, defendant admitted that he was the adult responsible for the house, even if he was not the owner. He stocked it with food, authorized guests, bought furniture for it, received his mail there, and had residency papers addressed to him there. By 2009, defendant simply could not have been unaware that drugs were not just being sold in the neighborhood, but in his house. At the very least, he would have known that law enforcement believed drugs were being sold out of his house and that there had, in fact, been drugs found there. The fact that the same kind of drugs was found there again, a year later, suggests, as discussed, only two possible explanations: defendant genuinely had no control over the house, or defendant authorized the drugs to be there. The evidence, when viewed in the light most favorable to the prosecution, is sufficient for a rational trier of fact to find the latter explanation proven beyond a reasonable doubt.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kristen Frank Kelly
/s/ Amy Ronayne Krause